25 T.C. 649 (1956)

Common control, under the Renegotiation Act, is a question of fact, determined by actual control, not merely legal control, considering the entire factual background including familial relationships, financial dependence, and influence over key personnel.

Summary

The case concerns the Renegotiation Act of 1943, specifically whether Zenith Export & Processing Co. was under the control, controlling, or under common control with Zarkin Machine Co., Inc. Charles Zarkin, the principal of Zarkin Machine, was found to have exerted sufficient control over Zenith, a partnership, to trigger renegotiation due to the combined sales exceeding the statutory threshold. The court focused on the substance of Zarkin's influence, derived from his familial relationships, financial backing, and influence over key employees of Zenith, rather than solely on formal legal structures. Despite the businesses being separate entities, their interconnectedness established common control. The decision highlights how actual control, demonstrated through various means, is key in determining control under the Act. The holding underscores the importance of considering all relevant factual circumstances when assessing the relationships between different entities, especially when determining potential excessive profits under the Renegotiation Act.

Facts

Zenith Export & Processing Co., a partnership formed in September 1943, packed commodities for export. All sales were under contracts defined in the Renegotiation Act. Zarkin Machine Co., Inc. was a corporation controlled by Charles Zarkin. Zenith's sales alone did not meet the $500,000 threshold for renegotiation, but the combined sales of Zenith and Zarkin Machine did. Charles Zarkin organized Zenith, and his relatives were partners, some also employees of Zarkin Machine. Zenith's working capital came largely from advances by Zarkin Machine. Zarkin Machine provided services and labor to Zenith. Charles Zarkin received a weekly payment from Zenith, but did not solicit business. Zenith's business ceased in March 1945. Zenith's general manager was under the influence of Zarkin and was the factory superintendent of Zarkin Machine.

Procedural History

The respondent unilaterally determined that Zenith realized excessive profits under the Renegotiation Act of 1943. The Navy Price Adjustment Board determined common control between Zenith and Zarkin Machine. The Tax Court reviewed the case, considering the facts stipulated by the parties. The issue before the Tax Court was whether Zenith and Zarkin Machine were under common control within the meaning of the Renegotiation Act of 1943.

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Issue(s)

1. Whether Zenith Export & Processing Co. was under the control of, controlling, or under common control with Zarkin Machine Co., Inc., within the meaning of section 403(c)(6) of the Renegotiation Act of 1943.

Holding

1. Yes, because Charles Zarkin, through his ownership and control of Zarkin Machine, exercised actual control over Zenith, establishing common control under the Renegotiation Act.

Court’s Reasoning

The court held that “actual control rather than legal control is determinative.” The court considered “the entire factual background.” Charles Zarkin was the “moving force” behind Zenith’s formation. Zarkin provided significant financial support to Zenith via Zarkin Machine. Family ties among the partners of Zenith resulted in Zarkin exerting substantial influence. Employees of Zarkin Machine also worked for Zenith and were subject to his influence. Even though Zenith and Zarkin Machine were separate businesses, Zenith was found to be a

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